

SUMMARY OF ETHICS RULES OFFICE OF THE SECRETARY 2010

OFFICE OF THE SECRETARY - CFO/ASA - OBL - OCIO - OFBNP - OGC - OIG - OLIA - OPA - OPSP - O/S - OBL - OFBNP - OIG - OPA - CFO/ASA - OCIO - OGC - OLIA - OPSP - OFFICE OF THE SECRETARY - **OCIO** - OIG - OPSP - OBL - OGC - OPA - CFO/ASA - OFBNP - OLIA - O/S - OPSP - OPA - OLIA - OIG - OGC - OFBNP - OCIO - OBL - CFO/ASA - O/S - CFO/ASA - OBL - OCIO - OFBNP - OGC - **OIG** - OLIA - OPA - OPSP - OFFICE OF THE SECRETARY - OBL - **OFBNP** - OIG - OPA - CFO/ASA - OCIO - OGC - OLIA - OPSP - O/S - OCIO - OIG - OPSP - CFO/ASA - OFBNP - **OLIA** - OFFICE OF THE SECRETARY - OPSP - OPA - OLIA - OIG - OGC - OFBNP - OCIO - **OBL** - CFO/ASA - O/S - CFO/ASA - OBL - OCIO - OFBNP - OGC - OIG - OLIA - OPA - **OPSP** - O/S - OBL - OFBNP - OIG - OPA - CFO/ASA - OCIO - OGC - OLIA - OPSP - OFFICE OF THE SECRETARY - OCIO - OIG - OPSP - OBL - OGC - OPA - CFO/ASA - OCIO - OLIA - O/S - CFO/ASA - OBL - OCIO - OFBNP - **OGC** - OIG - OLIA - **OPA** - OPSP - OFFICE OF THE SECRETARY - OBL - OFBNP - OIG - OPA - CFO/ASA - OCIO - OGC - OLIA - OPSP - O/S - OCIO - OIG - OPSP - **CFO/ASA** - OFBNP - OLIA - O/S - OPSP - OPA - OLIA - OIG - OGC - OFBNP - OCIO - OBL - CFO/ASA - OFFICE OF THE SECRETARY - CFO/ASA - OBL - OCIO - OFBNP - OGC -

**ETHICS LAW AND PROGRAMS
DIVISION
OFFICE OF THE ASSISTANT
GENERAL COUNSEL FOR
ADMINISTRATION
UNITED STATES DEPARTMENT
OF COMMERCE
202-482-5384
ethicsdivision@doc.gov
www.ogc.doc.gov/ethics.html**

PUBLIC SERVICE IS A PUBLIC TRUST

As an employee of the Office of the Secretary in the Department of Commerce, you have been placed in a position of trust and are held to a high standard of ethical conduct. This handout contains a summary of the rules set forth in conflict of interest statutes and the *Standards of Ethical Conduct for Employees of the Executive Branch*. You should retain this handout for use as a reference source. The first part of the handout contains a basic summary of ethics rules; the second part provides specific guidance for employees in the Office of the Secretary regarding some of the ethics rules.

For advice about ethics rules, contact the Ethics Law and Programs Division of the Office of the Assistant General Counsel for Administration, U.S. Department of Commerce, at 202-482-5384 or ethicsdivision@doc.gov.

Designated Agency Ethics Official:
Cameron F. Kerry, General Counsel

Alternate Designated Agency Ethics Official:
Barbara S. Fredericks, Assistant General Counsel for Administration

Office of the Assistant General Counsel for Administration

To obtain legal advice regarding other administrative law issues, call the:

Employment and Labor Law Division at 202-482-5017 – for advice regarding personnel law and labor law issues

General Law Division at 202-482-5391 – for advice regarding appropriations laws and laws regarding the release of information, conduct of advisory committee meetings, and general administrative law issues.

Office of Inspector General – The Ethics Law and Programs Division provides advice but does not investigate allegations of violations of law. To report fraud, waste, abuse, or other violations of law, or to request an investigation, call the Office of Inspector General Hotline at 800-424-5197 or 202-482-4661 or e-mail hotline@oig.doc.gov.



FINANCIAL CONFLICTS OF INTEREST

COMMERCE

Basic Principle: No Self-Dealing

General Rule. You may not participate as a Government official in a matter that will have a direct and predictable effect on your financial interests; on the financial interests of your spouse, minor children, household members, general partners, outside employers, or prospective employers; or on the financial interests of an organization in which you serve as a trustee, officer, or board member. This includes a matter that affects a company in which you own stock.

Exemptions from the General Rule. Exemptions permit you to participate in matters affecting a financial interest if the financial interest is:

- a holding in a diversified mutual fund;
- a holding in an industry sector-specific mutual fund or geographic sector-specific mutual fund of \$50,000 or less (if interests in all such funds in the same sector are \$50,000 or less);
- a publicly-traded stock or bond holding of \$15,000 or less;
- a publicly-traded stock or bond holding of \$25,000 or less with regard to a matter in which the entity is not a named party (and if total holdings in all affected entities are \$25,000 or less or, if it is a broad policy matter, if total holdings in the industry or group affected by the matter are \$50,000 or less); or
- not substantial and for which you have received a conflict of interest waiver through the Ethics Law and Programs Division. (Such waivers are generally available only for employees serving overseas under current Department policy.)

Waivers. Waivers of the disqualification requirement may be granted with regard to interests that are not covered by one of the exemptions but that are not substantial; however, current Department policy is to rely on the exemptions listed above rather than issue individual waivers. Nevertheless, if you believe that a waiver is appropriate in a particular case, contact the Ethics Law and Programs Division at 202-482-5384.



APPEARANCES OF BIAS (NON-FINANCIAL CONFLICTS OF INTEREST)

COMMERCE

Basic Principle: No Special Favors

Appearances of Impropriety concerning Participating in Matters Involving Relatives and Associates. Unless you receive specific authorization, you may not participate in a matter as an Department employee if one of the parties to the matter is (or is represented by) a person with whom you have a close family or business relationship (a “covered relationship”), if your participation would create an appearance of loss of impartiality.

Persons with whom you are considered to have a “covered relationship” include:

- persons with whom you have or are seeking a business or a financial relationship (other than a routine consumer transaction);
- members of your household;
- your close relatives;
- employers and clients of your parents, dependent children, and spouse (and their prospective employers and clients);
- former non-Federal employers and clients (for a one-year period, or a two-year period if you received an extraordinary severance payment from the former employer before entering into Federal service); and
- organizations in which you are an active participant (other than political organizations).

In addition, if you are a non-career (political) appointee and served as a registered lobbyist at any point in the two-year period before your appointment, for two years you may not work as a Federal employee on any matter on which you provided lobbying services or on any matter within the specific issue area on which you lobbied.

Exceptions. Authorization to participate in a matter in which one of these persons or entities is a party (or represents a party) may be granted if your Secretarial Office’s need for your participation outweighs appearance concerns. To seek such an authorization, contact the Ethics Law and Programs Division at 202-482-5384.



GIFTS, BRIBES, AND SALARY SUPPLEMENTATION

COMMERCE

Basic Principle: Avoid Undue Influence

Bribes and Salary Supplementation. You may not ask for or accept payment for taking or failing to take action as a Federal employee or for performing your Government job.

Personal Gifts. Generally, you may not accept a gift from anyone who has (or is seeking) a contract, grant, or other business with the Department; that is regulated by the Department; or has interests that may be affected by performance of your official duties or a gift that is offered because of your Government position. This usually includes gifts to your spouse or your minor child. However, *exceptions* apply to:

- gifts of \$20 or less (other than cash) (up to \$50 per year from the same donor);*
- gifts from relatives or friends (if based on a personal relationship);
- invitations to widely-attended events (if from the host (generally) and if your supervisor approves your attendance as being in the agency's interest);*
- discounts available to a broad range of persons;
- awards and honorary degrees (in specified circumstances);*
- meals, lodging, or transportation offered based on outside employment;*
- business meals overseas, if a foreign citizen is present (to the city's *per diem*);* and
- gifts from a foreign government of \$335 or less—gifts of over \$335 may be accepted, but become property of the United States Government.

** this exception does not apply if you are a political appointee and the gift is from a lobbyist or lobbying organization other than a 501(c)(3) organization or a media company*

Gifts between Employees. In general, you may not offer a gift to a supervisor or accept a gift from a subordinate. However, *exceptions* permit you to accept or give:

- a gift for a major life event (such as a child's birth, a retirement, or a wedding);
- items of \$10 or less given occasionally;
- food shared in the office; and
- personal hospitality at one's home or a gift to a host or hostess.

Gifts to the Office of the Secretary. With approval, you may accept a gift for Department activities, including travel (if unsolicited), if acceptance would not appear improper; this generally bars gifts from anyone who is a Department contractor or grantee or is regulated by Commerce.



OUTSIDE EMPLOYMENT AND ACTIVITIES

COMMERCE

Basic Principle: Avoid Divided Loyalties

General Rule on Outside Employment. You may not engage in outside employment or any other outside activity that conflicts with your Department position, including employment that requires disqualification from significant Government duties and activities that create an appearance of using public office for private gain. There are special rules for practicing law, writing or teaching for compensation, and working overseas. Furthermore, special rules apply regarding the outside activities of political appointees. Call the Ethics Law and Programs Division for specific advice regarding the outside activity rules, including these special rules.

Working for a Foreign Government. The U.S. Constitution bars you from working for, or accepting any compensation from, a foreign government, absent statutory approval.

General Rule on Contacting the Government and Receiving Payments for Communications by Others. You may not, in general, act as an agent or attorney or, if paid, otherwise represent anyone before any Federal agency or Federal court in your personal capacity. Representation includes any contact made on behalf of someone else with the intent to influence Government action. In addition, you are barred from receiving any payment that is based on the representational activities of someone else, such as a partner, before a Federal agency or Federal court during a period in which you served as a Federal employee.

Exceptions to the Rule on Contacting the Government. You may represent other Federal employees in some personnel disputes if you do not receive compensation and you may represent your parents, spouse, or children, or an estate or trust, if you receive prior approval. You also may represent, without compensation, professional, recreational, and similar groups before the Government if the majority of the organization's members are Federal employees or their spouses or dependents, and if the matter does not involve claims against the Government, proceedings in which the organization is a party, or Government financial benefits to the organization. Contact the Ethics Law and Programs Division (202-482-5834) if you need to obtain prior approval or advice.



POLITICAL ACTIVITIES

COMMERCE

Basic Principle: Keep Government and Political Activities Separate

General Restrictions concerning Engaging in Political Activities. You may not engage in partisan political activities while on Government premises or while on official duty. You also may not use the authority of your Government position or Government resources, including equipment, services, or your official title, in connection with partisan political activities. In addition, you may not:

- accept or receive a political contribution;
- personally solicit political contributions or host a political fund-raiser;
- run as a candidate in a partisan election (except as an independent candidate in local elections in the Washington, D.C. suburbs and other designated areas); or
- solicit or accept volunteer services from a subordinate.

(However, an exception to the rule against political fund-raising lets a union member solicit other union members who are not subordinates for contributions to a multi-candidate political committee of the union.)

Permissible Activities. Except as indicated in the above restrictions, you may actively engage in political campaign activities during non-duty hours (unless you are a career member of the SES). Permissible activities include:

- assisting in the management of a campaign;
- serving as an officer in a political organization;
- soliciting votes (but not funds) for a candidate;
- giving speeches on behalf of a candidate or party;
- making telephone calls or stuffing envelopes on behalf of a campaign; and
- speaking at a fund-raising event (if you do not ask for funds and are listed as a guest or speaker and not as a host of the event).

Special Rules for Career SES Members. If you are a career member of the Senior Executive Service, you may not actively assist in the conduct of a partisan campaign or serve as an officer in a political organization, even during non-duty hours. However, during non-duty hours you may actively participate in nonpartisan elections and referenda; regarding partisan candidate campaigns, you may vote, make contributions, sign nominating petitions, and engage in similar activities.



MISUSE OF GOVERNMENT POSITION AND RESOURCES

COMMERCE

Basic Principle: Do Not Steal

Use of Government Resources. You may use Government resources only for authorized Government activities. Such resources include Government equipment, supplies, and services, and the time of Government personnel. You may not use information you receive in the course of Federal service for personal purposes, unless the information is also available to the public. However, you may use frequent flier miles and other benefits you earned from Government travel for personal purposes, including personal travel or upgrades for official travel.

Rule on the Use of the Internet and E-mail. You may use access to e-mail and to the internet for personal activities if such use does not interfere with the business of your office and is not prohibited by your agency, *provided that* you do not use access for:

- obtaining or viewing sexually explicit material;
- the pursuit of private commercial business activities or profit-making ventures;
- partisan political activities;
- prohibited lobbying activities;
- uses that result in additional charges to the Government;
- engaging in prohibited discriminatory conduct;
- any activity that would bring discredit on the Department; or
- any violation of a statute or regulation.

You may also use office printers for personal internet and e-mail uses, provided it does not consume excessive resources.

Use of Government Position. You may not use your Government authority, including business contacts obtained through your Government employment, for personal activities. In addition, you may not use your Commerce title in connection with a non-Government activity, except that you may use your Government title in connection with personal activities as part of general biographical data if it is given no more prominence than other significant biographical details.

If you are a political appointee (non-career employee), you are specifically required by an Ethics Pledge you signed to make hiring and employment decisions based on the candidate's qualifications, competence, and experience.



SEEKING EMPLOYMENT AND POST-EMPLOYMENT ACTIVITIES

COMMERCE

Basic Principle: Avoid Divided Loyalties

Seeking Employment. Once you begin a job search, you must disqualify yourself from working on any matter affecting a prospective employer until either you or the possible employer notifies the other of the end of discussions (or until two months have passed with no response after submitting a résumé). If you are participating in a procurement over \$100,000, you must give written notice to your supervisor and the Ethics Law and Programs Division of employment contacts with or from a competing contractor.

Post-Employment Restrictions. After you leave Federal service, you may not:

- contact a Federal agency or court on behalf of someone else concerning a specific-party matter on which you worked;
- for two years, contact a Federal agency or court on behalf of someone else concerning a specific-party matter on which a subordinate of yours worked or which was otherwise under your responsibility during your last year of Federal service;
- for one year if you are a senior career employee or two years if you are a senior political appointee (have an annual base pay of \$155,440 or more), contact the Office of the Secretary or ESA (excluding Census) (or the entire Department if you are a Presidential appointee) on behalf of someone else;
- for one year, if you are a senior employee, advise (or represent before the U.S. Government) a foreign government or foreign political party;
- disclose or use protected nonpublic Federal information, such as treaty negotiation information, private personnel information, trade secrets or proprietary business information, and national security information;
- for one year, accept compensation from the contractor of a \$10,000,000 or more procurement, if you served as a procurement official or program manager; or
- if you are a political appointee, for the remainder of the President's Administration, lobby any political appointee in the Executive Branch.

Exceptions and Special Post-Employment Rules. There are some exceptions to these rules, such as for providing testimony in some cases and for representing state and local governments, international organizations, and educational and medical institutions. Additional restrictions apply to attorneys, and to former employees who received buyouts. Contact the Ethics Law and Programs Division for a handout and advice.



FINANCIAL DISCLOSURE

COMMERCE

Basic Principle: Tell the Whole Truth

Guidelines for Filing a Financial Disclosure Report. If you serve in a position in which your activities could have a substantial impact on the public, you may be required to file a financial disclosure report. Such reports are due when you are appointed to such a position and annually thereafter. The information requested on such forms—financial investments, liabilities, gifts, non-Federal positions, and arrangements with past and future employers—is information relevant to the ethics rules discussed in this handout. Ethics officials review the reports in order to identify potential conflicts of interest and to advise you on means to resolve any problem. For this system to work effectively, you must file your report on time and you must list all information requested as completely and clearly as possible.

Specific Guidance. When filling out your report, please:

- sign and date the report;
- if reporting an IRA or 401(k) plan, identify the specific holdings in the account;
- do not list as a gift payments for Government travel—these are gifts to the Government and should be reported on a Form CD 210 and a Form SF 326; and
- if listing an investment in, or position with, a closely-held company or partnership, identify the nature of the business and its location (city and state).

Remember that this information is used to provide advice to you, so the information you include on your report must be specific and complete in order to be useful.



**ETHICS GUIDANCE FOR EMPLOYEES
OF THE
OFFICE OF THE SECRETARY**

COMMERCE

Financial Conflicts of Interest

Investments by Senior Officials with Department-wide Responsibilities – A broader range of investments is likely to create a conflict of interest for officials with Department-wide responsibilities than for employees in operating units, but disqualification from a particular matter due to a conflict of interest is usually easier the broader the employee's area of responsibility. Thus, a holding in a commercial fishing company may present a potential conflict of interest for both an employee in the National Marine Fisheries Service (NMFS) and an employee in the Immediate Office of the Secretary, but recusal from participating in commercial fishing matters may not be practical for a NMFS employees whereas it may be practical for an employee in the Office of the Secretary.

Appearances of Bias (Non-Financial Conflicts of Interest)

Employment After Serving as a Lobbyist – If you are a political appointee, you are required to sign a pledge agreeing that if you worked as a lobbyist (were required to register under the Lobbying Disclosure Act) or a lobbying organization, you will not seek or accept Federal employment with any Executive agency that you lobbied. In addition, as provided in the Ethics Pledge, for two years after your appointment to the Government, you may not participate as a Government official in any matter on which you lobbied during the two years prior to your Federal employment or participate in the specific issue area in which such a matter falls. You should contact an attorney in the Ethics Law and Programs Division at 202-428-5384 for further guidance on this restriction if you have a question.

Participation in Professional Organizations – If, in a personal capacity, you are an active member of a professional organization, such as a bar association or other professional association, you will be prohibited from participating as a Department employee in matters in which that organization is a party or is representing a party. If this will interfere with your Government duties, you should refrain from such activities or should seek advice from the Ethics Law and Programs Division. If you are serving with an organization, you must be careful not to commingle your private and Government activities, such as by speaking at an organization event in your official capacity or while on Government time. If it is useful for your office to provide input to the organization, you may be permitted to serve as a liaison in an official capacity, but only if you do not also have a role with the organization in a private capacity. You may not serve in an official capacity as an officer or director of a non-Federal organization (unless it is a standards-setting body).

Authorization to Participate in a Matter Involving a Former Employer or Client – As noted in the summary of ethics rules, you generally may not participate in a matter if one of the parties is a former employer or client, or if one of the parties is represented by a former employer or client, for a period of one or two years (depending on severance payment arrangements and whether you are a political appointee). If it is important for the Department that you participate in the matter, notwithstanding the potential appearance problems, special authorization to participate is available through the Ethics Law and Programs Division.

Gifts, Bribes, and Salary Supplementation

Gifts from Lobbyists and Lobbying Organizations to Political Appointees – If you are a political appointee, you are required to sign an Ethics Pledge agreeing not to accept gifts from lobbyists or lobbying organizations (persons required to register under the Lobbying Disclosure Act and organizations hiring such persons), in most cases even if an exception applies under the general ethics regulations relating to gifts. This bar on gifts from lobbyists does not apply, however, to gifts from 501(c)(3) organizations or from media companies. However, you may not accept from other lobbyists or lobbying organizations: gifts of \$20 or less as well as gifts over that amount (unless an exception applies not related to the value of the gift); invitations to widely-attended gatherings (regardless of whether your supervisor signs an approval form); awards and honorary degrees; business meals overseas; and meals, lodging, transportation and similar benefits based on an outside business relationship. Exceptions may be available in extraordinary circumstances. Contact the Ethics Law and Programs Division for further advice at 202-482-5384.

Widely-Attended Events – You may be invited to an event, such as a dinner, lunch, or reception, held by a company, organization, or government with interests in Department activities. You may attend such an event if: (1) the value of the invitation is \$20 or less (and total gifts you received from the person or firm inviting you will remain \$50 or less for the year) or your supervisor approves your attendance as in the interest of the Department (and, if the invitation is not from the host, more than 100 persons are attending and the value per person is \$335 or less) and (2) if you are a political appointee, the invitation is not from a lobbyist or lobbying organization (unless it is a 501(c)(3) organization or a media company). To an event for which you received supervisory approval to attend, you may also bring your spouse or an accompanying guest if other persons invited are also allowed to bring a spouse or accompanying guest. However, you may not attend such an event if it is primarily entertainment in nature, such as a concert or sports event. A supervisor reviewing such a request for approval must carefully consider the benefit the agency will receive and determine whether there will be any adverse public reaction to a Department employee attending the event and, if so, whether the benefit outweighs the appearance of impropriety. To assist supervisors, the Ethics Law and Programs Division will provide a form for your supervisor to sign that describes all the factors that must be considered before approval is given.

Gifts from a Foreign Government – Due to a change in law in 2008, gifts from a foreign government of \$335 or less may be accepted and retained by an employee for personal use. Gifts of greater value are accepted on behalf of the United States Government. Prior to 2008, the value of gifts that could be retained was \$305.

Gifts to Employees in Sensitive Positions – The ethics rules regarding gifts apply to all Executive Branch employees, including employees with investigative and law enforcement functions. Under those rules employees may accept gifts of less than \$20, even from someone who is the subject of an investigation (although any payment specifically made to influence Government action would be a bribe and is illegal regardless of value). Notwithstanding the exception allowing acceptance of gifts of minimal value, employees in particularly sensitive positions may voluntarily decide to apply to themselves a stricter standard and refuse gifts of even minimal value to avoid any appearance of impropriety. This is encouraged for employees in sensitive positions, but is not required.

Soliciting Gifts for Department Programs – Department officials may solicit, as well as accept, gifts (other than travel gifts) to support Department programs, provided that the gifts do not present an appearance of loss of impartiality with regard to agency programs or employees. This authority has been used in the past to obtain funding in support of conferences and similar events. It is important that any solicitation program be conducted in a manner that ensures fairness and avoids any appearance of preferential treatment to donors. Thus, solicitations should be broad-based, made to trade associations or groups representing a broad spectrum of companies or to a broad spectrum of interested companies. Sponsorship arrangements may not include an agreement of exclusivity (i.e., sponsors may not bar acceptance of donations from competing companies) and may not include arrangements for donors to have special access to Government officials or to Government information. Before soliciting gifts, you should seek specific guidance from the Ethics Law and Programs Division at 202-482-5384.

Honoraria and Speaking Fees in Connection with Official Speaking Engagements – NOAA has authority to accept travel payments in connection with official speaking engagements, if not solicited and if the circumstances would not be likely to create an appearance of loss of impartiality in the operation of Department activities. However, a Department policy bars Commerce offices from accepting an honorarium in connection with an official speech or appearance.

Outside Employment and Activities

Outside Practice of Law – If you serve in the Department as an attorney (or serve in a non-attorney position, but have a license to practice law), you are permitted to practice law as an outside activity provided that it is not incompatible with your Government duties. In fact, you are encouraged to provide *pro bono* legal services to poor or disadvantaged persons or groups. However, any private legal work, including *pro bono* work, must be compatible with your duties as a Government lawyer; it may not involve:

(1) representational activities before a Federal court or Federal agency (except with regard to representing an employee in a Federal personnel action if such representational activity is not related to your Government duties); (2) legal services in matters in which the United States Government is a party or has a substantial interest; or (3) providing services during regular duty hours. Because of the last factor, representing a party in litigation would, in most situations, be incompatible with your Government position because it may require you to provide legal services during regular duty hours when leave may not be available.

Service with Non-Federal Organizations – If you serve as an officer or director of an outside organization, such as a professional organization or trade association, you may not participate as a Department employee on any matter that is likely to affect the financial interests of the organization. This may preclude you from serving with organizations that are active in matters before your office. If it would benefit your office to have an official relationship with a private organization, you may be assigned as a liaison to the organization, in which case your service with the organization would be in an official capacity, rather than a personal capacity. However, you may not be assigned to serve in an official capacity as an officer or director of a non-Federal organization, unless your services is specifically authorized by statute or is in a standards-setting body.

Representing Others Before Federal Agencies – All employees in the Department, like all Executive Branch employees, are barred from serving as an agent or attorney for or, if paid, otherwise representing anyone before a Federal agency or Federal court. This generally bars any contacts made with the intent to influence Government action. However, you may contact other agencies in an official capacity if the communication supports an agency program, including contacting the Bureau of Citizenship and Immigration Services of the Department of Homeland Security (the successor agency to the Immigration and Naturalization Service (INS)) to recommend a residency permit for an individual whose presence in the United States directly supports a Department program. Such contacts may only be made to support an agency program and should be approved by a senior official in your Secretarial Office.

Payment for Representational Activities – As noted in the summary of rules, you are barred from receiving payment for representational activities before a Federal agency or Federal court conducted by yourself or another person. This has been interpreted as applying to payments you receive during a period of Federal employment, even if the representational activity pre-dated Federal service. Thus, if you are entitled to a partnership distribution that will be paid out while you are in Federal service, you must ensure that the payment does not include any amounts which derive from representational activities before a Federal agency or Federal court. Similarly, after leaving Federal service you may not receive any payments that are based on representational activities that took place during your period of Federal service. Thus, if you leave Federal service to become a partner in a firm, you must ensure that any partnership distribution you receive will not include funds based on representational activities by the firm before a Federal agency or Federal court which took place during the period you worked for the Government. For further advice on

this issue, contact the Ethics Law and Programs Division at 202-482-5384.

Special Rules for Outside Activities of Some Political Appointees – If you are a Presidential appointee in a Senate-confirmed position or a non-career member of the Senior Executive Service, you will be subject to restrictions on your non-Federal activities that do not apply to other employees. If you are a Presidential appointee, you may not receive any outside earned income. If you are a non-career SES or SFS, your outside earned income is limited to \$26,550 per year. Furthermore, if you are a non-career SES or SFS you may not receive compensation, including travel payments, for teaching, speaking, or writing on the general areas of responsibility of your agency; you must receive prior written approval from an ethics official before accepting any compensation for teaching; you may not receive compensation for practicing a profession that involves a fiduciary relationship (such as the practice of law); you may not receive compensation for affiliating yourself with a firm that provides professional services involving a fiduciary relationship; you may not receive compensation for serving as an officer or board member of an association, corporation, organization, or other entity; and you may not permit your name to be used by a professional firm or association that has fiduciary responsibilities (such as a law firm or accounting firm).

Political Activities

Use of Access to E-Mail – It is important that you do not send, or even forward, political messages using your Government e-mail account or your Government computer to access a private e-mail account. Such use of Government resources is an improper political activity and is the most often basis for referrals to the Office of Special Counsel for disciplinary action.

Political Activities by Presidential Appointees – Presidential Appointees in positions requiring Senate confirmation (other than the Inspector General), unlike other Federal employees, are permitted by law to participate in political activities during duty hours and while on Government premises. They are also permitted by statute to use some Government resources in conducting political activities, such as an official vehicle to attend a political event or a fax machine to send or receive political correspondence, provided the campaign or the individual pays the Department for any costs in advance. However, Department policy is to permit only the Secretary to engage in such activities on Department premises or to use Government resources for political activities.

Working for a Political Party or a Partisan Campaign – Most Department employees (except career SES members and administrative law judges) are permitted to work for a campaign during non-duty hours. However, such activity must comply with ethics regulations regarding outside employment; these rules bar employees from working during off-duty hours for their Government supervisor. Thus, if you write speeches (non-political) or do advance work (non-political) for a senior Department official as part of your Government duties, you may perform similar, but political, work for a campaign. However, you may not

be employed personally by a person in your chain of command to provide such services.

Misuse of Government Resources

Employment Decisions by Political Appointees – If you are a political appointee, you were required to sign an Ethics Pledge in which you agree that any hiring or other employment decision you make is based on the candidate’s qualifications, competence, and experience.

Protection of Information – As an employee in the Office of the Secretary, you must be particularly careful to safeguard non-public information to which you have access, including business proprietary information and information obtained in the course of an investigation.

Role of Government Attorneys – If you are a Government attorney, you must maintain the attorney-client privilege with regard to legal services performed for the Government. For purposes of safeguarding information, the privilege is with the Department or the United States Government, rather than with any individual employee to whom you provide advice. If you have a question regarding disclosing information or the attorney-client privilege, you may contact the Ethics Law and Programs Division or consult with your bar association or private counsel.

Seeking Employment and Post-Employment Activities

Definition of “Senior Employee” – The definition of “senior employee” for purposes of post-employment restrictions means anyone receiving base pay equivalent to or greater than 86.5% of Executive Level II, which in 2010 is equal to or greater than \$155,440. If your base pay is this amount, you will be subject to the one-year “no-contact” rule and the restrictions on representing or advising foreign governments.

New Restrictions Applicable to Political Appointees – If you are a political appointee, you are required to sign an Ethics Pledge in which you agree to a number of restrictions that will apply after you leave Federal service. These restrictions, which do not apply to career Federal employees, are that:

- for the remainder of the President’s Administration, you will not lobby (provide services that require registration under the Lobbying Registration Act) any political appointee in the Executive Branch, or any admiral or general;
- if you leave Federal service to become a lobbyist or work for a lobbying organization, you will not seek or accept employment with a Federal agency that you lobbied during the prior two years;
- if you are a senior employee (annual base pay of \$155,440 or more), for two years after leaving Federal service you will not represent anyone before your former agency.

The requirement to sign an Ethics Pledge, and the imposition of these restrictions, are based on an Executive Order on ethics that the President issued on January 21, 2009.

Post-Employment Restrictions Relating to Treaties and Trade Agreements – The general post-employment restrictions bar contacts with agency officials relating to “particular matters involving specific parties” on which the former employee worked or that were under the former employee’s official responsibility. For purposes of this restriction, some treaties and trade agreements are considered particular matters involving specific parties. Each treaty or trade agreement is characterized on a case-by-case basis. If you (or a subordinate of yours) worked on such a treaty or trade agreement as a Department employee, you will be barred from representing someone regarding the treaty or trade agreement before a Federal agency or Federal court. However, this would not bar you from representing others regarding a dispute that will be settled under the terms of such a treaty or trade agreement. You should contact the Ethics Law and Programs Division for further advice on this matter if such a situation arises.

Nonpublic Information Regarding an Ongoing Treaty Negotiation – Former Federal employees are specifically barred for one year after leaving Federal service from either using or disclosing nonpublic information obtained in the course of a treaty negotiation in connection with representational activities before the Federal Government. This restriction applies to you even if you are not a member of the negotiating team for the United States.

Post-Employment Restrictions Applicable to Attorneys – If you are a member of a bar, you must comply not only with Federal post-employment rules but with restrictions imposed by any bar of which you are a member. Please note that although most Federal post-employment rules restrict only representational activities (i.e., direct contacts with Federal officials), bar rules are likely to impose behind-the-scenes restrictions as well. You should seek advice from your bar association or private counsel regarding these restrictions. If, under applicable bar rules, you may participate in a matter with the approval of a former client, you may seek such approval through the Ethics Law and Programs Division of the Office of the General Counsel if the Department is the client to whom the restriction refers.



CITATIONS TO APPLICABLE LAW

COMMERCE

Financial Conflicts of Interest

18 United States Code (U.S.C.) § 208

5 Code of Federal Regulations (C.F.R.) §§ 2635.401 - 2635.403, 2635.502, 2640.201 - 2640.202

Appearances of Bias (Non-Financial Conflicts of Interest)

5 C.F.R. §§ 2635.501 - 2635.503

Executive Order 13490, dated January 21, 2009

Gifts, Bribes, and Salary Supplementation

5 U.S.C. §§ 7342, 7351, and 7352; 15 U.S.C. § 1522; 18 U.S.C. §§ 201 and 209

5 C.F.R. §§ 2635.201 - 2635.205, 2635.301 - 2635-304; 41 C.F.R. Part 304-1

Department Administrative Order 203-9

Executive Order 13490, dated January 21, 2009

Outside Activities and Lobbying the Government

18 U.S.C. §§ 203, 205, and 208

5 C.F.R. §§ 2635.801 - 2635.809

Political Activities

5 U.S.C. §§ 7321 - 7326; 5 C.F.R. §§ 734.201 - 734.702

Misuse of Government Position and Resources

18 U.S.C. § 641; 5 C.F.R. §§ 2635.701 - 2635.705

Department of Commerce Internet Use Policy

Seeking Employment and Post-Employment Restrictions

18 U.S.C. § 207; 41 U.S.C. § 423

5 C.F.R. Parts 2635, 2637, and 2641; 15 C.F.R. §§ 15.11 - 15.18; 37 C.F.R. Part 10

Executive Order 13490, dated January 21, 2009

Prepared by the Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, United States Department of Commerce – January 4, 2010